

SUPREME COURT OF KENTUCKY

DISCRETIONARY REVIEW GRANTED
(Pending Cases Only)

DISCRETIONARY REVIEW GRANTED 3/9/16

Wright v. LP Pikeville, LLC, 2014-SC-238-DG
Guardianship. Contract. Arbitration Agreements. KRS 387.660. Issues include whether a legal guardian has the authority to enter into a binding pre-litigation arbitration agreement on behalf of her ward.

DISCRETIONARY REVIEW GRANTED 10/13/16

Department of Revenue v. Interstate Gas Supply, 2016-SC-281-DG
Kentucky Constitution § 170. Tax Exemption. Institution of Purely Public Charity. The issue in this case is whether an institution of purely public charity should be exempt from payment of a use tax under § 170 of the Kentucky Constitution.

Oral argument-April 2017

DISCRETIONARY REVIEW GRANTED 12/8/16

Auslander Properties, LLC v. Nalley, 2016-SC-99-DG
Negligence Per Se. KOSHA/OSHA. Property Management Companies. Issues include whether a small property rental company was required to comply with KOSHA/OSHA fall prevention regulations when it hired an independent contractor to trim trees at one of its properties.

Oral argument-August 2017

Baumann Paper Co. v. Holland, 2016-SC-511-DG

Contracts. Statute of Frauds. Unjust enrichment. The issue involves the enforceability of an agreement to provide future benefits in lieu of a retirement plan, which though signed by the employee was never executed by the employer.

Oral argument-August 2017

DISCRETIONARY REVIEW GRANTED 3/15/17

Scalise v. Sewell-Scheuermann, 2016-SC-246-DG

Taxes. Mayor and City Council. KRS 92.340. Issues include whether the city's mayor and council members are personally liable for spending excess funds raised under the city's sanitation tax on other legitimate city expenses.

Oral argument-December 2017

DISCRETIONARY REVIEW GRANTED 2/9/17 and CROSS MOTION GRANTED 4/19/17

Dept. of Medicaid Services v. Sexton, 2016-SC-529-DG, Coventry Health and Life Insurance Company v. Sexton, 2016-SC-0534-DG, and Sexton v. Cabinet for Health and Family Services, 2016-SC-540-DG **and** (Cross Motion) Coventry Health and Life Insurance Company v. Sexton, 2017-SC-95-DG

Medicaid. Denial of benefits. Appeals. Standing. On this cross-motion, a managed care organization which contracted with the Cabinet for Health and Family Services to provide services to a Medicaid recipient asks for a determination of whether the recipient has standing to invoke the Cabinet's fair hearing procedures and the subsequent judicial review after receiving all of the medical treatment, and even though the recipient is not financially liable for unpaid expenses.

Oral argument-March 2018

DISCRETIONARY REVIEW GRANTED 3/15/17 and CROSS MOTION GRANTED 4/19/17

Yung v. Grant Thornton, LLP, 2016-SC-571-DG **and** (Cross Motion) Grant Thornton, LLP v. Yung, 2017-SC-151-DG

Torts. Punitive Damages. Issues include the propriety of the Court of Appeals panel's remittitur of \$60 million of the \$80 million awarded in punitive damages in addition to compensatory damages of \$19.315 million

for fraudulent and grossly negligent tax and accounting services. Issues presented in the cross-motion concern the compensatory damages award as well as the punitive damages.

Oral argument-February 2018

DISCRETIONARY REVIEW GRANTED 4/19/17

Government Employees Insurance Company v. Houchens,
2016-SC-546-DG

Insurance. MVRA. KRS 304.39-270-(1). The question is whether a Kentucky motor vehicle reparations obligor may terminate their insured's basic reparations benefits premised purely upon "paper reviews" of medical records not tendered for court review.

Oral argument-October 2017

American Mining Insurance Co. v. Peters Farms, LLC,
2017-SC-66-DG

Insurance Coverage. Interpretation of "Occurrence." Measure of Damages. The issue involves the interpretation of insurance policy language as to an "occurrence," to determine whether there is coverage for the mistaken mining of another's property. In addition, there is an issue regarding the measure of damages in such a case, specifically, the reasonable royalty rate vs. the market rate of the coal minus the extraction costs.

Oral argument-December 2017

DISCRETIONARY REVIEW GRANTED 6/8/17

Peterson, Administratrix v. Foley, et al., 2017-SC-28-DG

Torts. Qualified Official Immunity. Issues involve allegations of negligent performance of ministerial duties of intake and supervision by deputies at a county jail, in which a prisoner died in her detox cell after a hydrocodone overdose.

Oral argument-August 2018

Harper v. University of Louisville, 2016-SC-632-DG

Whistleblower Act. Issues involve evidentiary sufficiency to support a jury verdict for violation of the Kentucky Whistleblower Act.

Oral argument-February 2018

Cales v. Baptist Healthcare System, Inc., 2017-SC-57-DG and Baptist Healthcare System, Inc. v. Cales, 2017-SC-76-DG

Products Liability. Medical Malpractice. Federal Preemption. Off-Label Use of Medical Devices. Informed Consent. Hospital Standard of Care. An issue of first impression in Kentucky is whether the trial court properly dismissed the state products liability claims against the hospital on the basis of express federal preemption in circumstances involving the off-label use of a medical device. Another issue is the standard of care applicable to the hospital when a medical device is being used off-label. Did the Court of Appeals err when it determined that the hospital had a duty to inform the patient of the regulatory status of the device and its off-label use and the risks attendant thereto?

Oral argument-February 2018

DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT
6/8/17

Ritchie v. Turner, 2017-SC-157-DG

Qualified Immunity. School Administrators. Discretionary v. Ministerial Acts. Application of KRS 620.030. The issue is whether the acts or omissions to act on the part of school administrators in addressing accusations of sexual abuse against a student by a school teacher were discretionary, and thus, subject to qualified immunity. An additional issue is even if the acts were discretionary, did the administrators act in bad faith, and thus abrogate any claim of qualified immunity. Also at issue is whether the duty to report abuse of a child under KRS 620.030 is discretionary, and if not, then should the administrators be immune from liability under those circumstances when they have been convicted of violating the statute.

Dorsey v. Commonwealth, 2017-SC-5-DG

Criminal Law. RCr 11.42. Denial of Counsel. Conflict of Interest. The issue is whether the Movant was denied his right to counsel during the motion to withdraw his guilty plea when his trial counsel was questioned under oath by the court as to what counsel advised his client regarding the minimum sentence (85%) he would have to serve prior to consideration for parole. It was asserted that this created a conflict of interest between counsel and his client, and thus denied him effective counsel at this critical stage of the proceedings.

DISCRETIONARY REVIEW GRANTED 8/16/17

Corey M. Jeter V. Commonwealth of Kentucky, 2017-SC-232-DG
Criminal Law. Bond Increase Post-Indictment. Application of Bail Credit.
The primary issue is whether the trial court may increase pretrial bond set
in district court when only difference in circumstances is that the defendant
has been indicted by the grand jury since bond was set.
Oral argument-March 2018

Department of Revenue v. Sommer, 2017-SC-71-DG
Open Records. Issues involve the interplay between provisions of the KRS
131 Taxpayer Bill of Rights and Open Records Act exclusion KRS
61.878(1)(l) regarding Department of Revenue rulings not appealed to the
Kentucky Board of Tax Appeals.
Oral argument-March 2018

DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT
8/16/17

C.W. Hoskins Heirs v. Wells, 2017-SC-004-DG
Real Property. Boundary Dispute. Issues include whether the Hoskins
Heirs' surveyor's location of the boundary line contradicts the deeds and
should have been rejected by the circuit court.

DISCRETIONARY REVIEW GRANTED 9/20/17

Azmat v. Bauer, 2016-SC-560-DG
Infants. Personal Injury. *Pro Se* Practice. Issues include whether an
injured child's non-attorney parent may appear *pro se* on the child's behalf.
Oral argument-August 2018

Maze v. Board of Directors for the Commonwealth Post-Secondary
Education Prepaid Tuition Trust Fund, 2017-SC-233-DG
Contracts. Statutory Amendments. Retroactive Application. The issue in
this case is whether the language of the Kentucky Affordable Prepaid
Tuition (KAPT) Master Agreement, by which the Movant's children were to
receive future tuition benefits, permits amendments to the Agreement
which may be retroactively applied to limit the use of the benefits provided
by the original contract, as well as to limit the growth of the available funds.
Oral argument-June 2018

Travelers Indemnity Company v. Armstrong, 2017-SC-41-DG

Martin Cadillac, Inc. v. Armstrong, 2017-SC-42-DG

KRS 186.010(7)(c) and KRS 186A.220. Requirements to Transfer an Automobile. The issue is whether a car dealer complied with the statutory transfer requirements, specifically, obtaining proof of insurance prior to actual transfer of the vehicle, so as not to be deemed the owner of a vehicle at the time of a subsequent accident. Additional issues include (1) whether there can be a *bona fide* sale where the dealer has not yet received a valid title to transfer the vehicle; (2) whether under the circumstances the dealer complied with the statutory requirement that transfer paperwork be promptly completed, so as to be protected from liability for a subsequent accident, and (3) whether compliance by a subsequent dealer with the statutory requirement regarding proof of insurance absolves from liability for a subsequent accident a prior dealer who failed to promptly comply with the statute.

Oral argument-August 2018

DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT

9/20/17

Kentucky Board of Medical Licensure v. Strauss, 2017-SC-260-DG

Administrative Law. KRS 13B.120(1) and KRS 13B.110(1). The issues for consideration are whether the Licensure Board decision was entered in violation of certain statutory requirements, specifically, whether, and the extent to which, the Board panel must consider the record before entry of its order as required by KRS 13B.120(1), and the failure of the hearing officer to recommend a specific penalty as required by KRS 13B.110(1).

Smith v. McGill, 2017-SC-395-DE

Family Law. KRS 403.220. Attorney Fees. The issue is whether the statute requires a finding of financial disparity before the family court may award attorney fees based upon obstructive tactics or conduct of a party.

DISCRETIONARY REVIEW GRANTED 10/25/17

Bradley v. Kentucky Retirement Systems, 2017-SC-275-DG

Administrative Law. State Disability Retirement. Issues involve viability and application of the “compelling evidence” standard for judicial review of denials of applications for state permanent disability retirement benefits.

Oral argument-June 2018

Kentucky Retirement Systems v. Ashcraft, 2017-SC-345-DG
Administrative Law. State Disability Retirement. Issues involve viability and application of the “compelling evidence” standard for judicial review of denials of applications for state permanent disability retirement benefits.
Oral argument-June 2018

Northern Kentucky Area Development District v. Snyder, 2017-SC-277-DG
Employment Relations. Contracts. Arbitration. Federal Preemption. Issues involve enforceability of an arbitration agreement entered as a condition of employment with a public agency.
Oral argument-June 2018

Lexington-Fayette Urban County Human Rights Commission v. Hands-On Originals, 2017-SC-278-DG
Administrative Law. Human Rights Commission. Fairness Ordinance. Issues involve the alleged violation of a local fairness ordinance flowing from refusal of a private business to print customized T-shirts for the “Lexington Pride Festival.”

American General Life Insurance Company v. DRB Capital, LLC, 2017-SC-329-DG
Anti-assignment Provisions in Settlement Agreements. KRS 454.430. The issue is whether an anti-assignment provision in a settlement agreement was enforceable to prohibit the assignment of annuity payments to a third party.
Oral argument-September 2018

DISCRETIONARY REVIEW GRANTED 8/16/17 and CROSS-MOTION GRANTED 10/25/17

Hensley v. Gadd, 2017-SC-189-DG and (Cross-Motion) Gadd v. Hensley, 2017-SC-431-DG
Property. Deed Restrictions. Short-term rental of property. Harassment. The issue in the motion for discretionary review is whether the language of the deed regarding its use as a single-family residence permitted short term rentals of this lake property or whether it constituted the operation of a business which violated certain deed restrictions. The issue on the cross-motion for discretionary review is whether the surrounding homeowners in seeking to enforce deed restrictions on this property had a “legitimate

purpose” when making complaints against the owner and others using the property, or whether their complaints about their use constituted harassment.

Oral argument-September 2018

DISCRETIONARY REVIEW GRANTED 10/25/17 and CROSS MOTION GRANTED 12/7/17

Jones v. Bailey, 2017-SC-203-DG and (Cross Motion) Bailey v. Jones, 2017-SC-604-DG

Parole Board. Entitlement to Assistance of Counsel. The issues include whether the final post-incarceration sex offender supervision revocation hearing is a “critical stage” of the proceeding, triggering entitlement to assistance of counsel.

Oral argument-October 2018

DISCRETIONARY REVIEW GRANTED 12/7/17

Jewish Hospital & St. Mary’s Healthcare, Inc. d/b/a Jewish Hospital Medical Center South v. House, 2017-SC-440-DG

Evidence. Directed Verdict at Close of Plaintiff’s Case-in-Chief. Empty Chair Defendant. The issue in this case is whether the Court of Appeals correctly determined that a trial court should never grant a directed verdict against an empty-chair defendant at the close of the plaintiff’s case-in-chief.

Oral argument-September 2018

DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT 12/7/17

Bingham Greenebaum Doll v. Lawrence, 2017-SC-105-DG

Jurisdiction. Ripeness. Justiciability. Issues include whether the circuit court had jurisdiction over a law firm’s counterclaim for fees due under a promissory note when the counterclaim was filed two months before the note’s maturity date.

Kentucky Department of Corrections v. Dixon, 2017-SC-127-DG

Criminal Law. Corrections. Violent Offenders. Work-Time Credit. Issues involve whether Corrections was required to award work-time credits to an

inmate serving consecutive sentences for several crimes, only one of which was a violent offense.

P.B. v. Cabinet for Health and Family Services, 2017-SC-360-DGE
Family Law. Termination of Parental Rights. Grandparents Rights. Issues include whether the family court denied the grandparents the ability to pursue custody of their grandchildren prior to terminating their daughter's parental rights.

DISCRETIONARY REVIEW GRANTED 2/7/18

The Federal Materials Company v. Commonwealth of Kentucky, Finance and Administration Cabinet, 2017-SC-153-DG
Class Actions. Settlement of class claims. Sovereign Immunity. Voluntary Dismissal of Claims. The main issue in this case is whether a class member who fails to opt out or to collect its share of a class settlement may be barred from pursuing claims against those parties who were participants in the settlement or who may have indemnity against parties who were participants in the settlement. Another issue is whether sovereign immunity allows the Cabinet to pursue claims despite a class settlement in which the Cabinet was deemed a participant. Also, should a party be permitted to voluntarily dismiss its claims without prejudice when faced with a motion for summary judgment?

Commonwealth v. Riker, 2017-SC-483-DG
Criminal Law. DUI. Independent Blood Testing. Issues involve whether an individual arrested for DUI is deprived of due process by an independent blood testing facility requirement of prepayment of a \$450 fee for such testing after submission to intoxilyzer testing.

Oral argument-September 2018

Sparkman, d/b/a In-Depth Sanitary Service Group v. Consol Energy, Inc., 2017-SC-541-DG

Tortious Interference with Contract by a Parent Corporation of a Wholly-Owned Subsidiary. The issue of first impression in this case is whether claims for a tortious interference with a contract are barred under any circumstances against a parent corporation which prematurely terminates contracts entered into by its wholly-owned subsidiary, or whether and under what circumstances, such claims may be permitted against the

parent corporation, and if so, whether the evidence in this case warranted submission of that claim to the jury for consideration.

Oral argument-February 2019

Cabinet for Health and Family Services, Commonwealth of Kentucky, on Behalf of the Minor Children, E. S. and K. S. v. R. S., 2017-SC-587
Sex Offender. Unsupervised Custody and Visitation with Minor Children. Dependency, Neglect and Abuse. The issue is whether a convicted sex offender may ever have custody of his own children without supervision. Also, may the court impose requirements of supervision without current allegations of abuse against the parent with a history of sexual abuse against a minor family member?

Oral argument-September 2018

DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT
2/7/18

Oliphant v. Ries, 2017-SC-208-DG

Medical Malpractice. Expert Witness Disclosures. Issues include: (1) whether the circuit court abused its discretion by allowing the defendant's expert witness to testify on an issue that was not mentioned in the expert witness disclosure but was discussed during the witness's deposition; and (2) whether the circuit court abused its discretion by refusing to allow the plaintiff to rebut the defense expert's theory with the testimony of an expert named shortly before trial.

Lawrence v. Bingham Greenebaum Doll, 2017-SC-531-DG

Legal Malpractice. Criminal Defense. Exoneration Rule. Issues include whether a convicted criminal must prove that he was judicially exonerated to succeed in his legal malpractice case against former defense counsel.

Lexington-Fayette Urban County Government v. Moore, 2017-SC-555-DGE

Real property. Condemnation. Issues involve the right to take one-tenth of an acre for a drainage culvert by permanent easement rather than by fee simple.

Commonwealth v. Armstrong, 2017-SC-602-DG

Criminal Law. Evidence. Issues involve the interplay between KRE 609 and KRE 611 in an assault prosecution.

DISCRETIONARY REVIEW GRANTED 12/7/17 and CROSS MOTION GRANTED 2/7/18

Commonwealth v. Padgett, 2017-SC-441-DG and (Cross Motion) Padgett v. Commonwealth, 2017-SC-661-DG

Criminal Law. Mistrial. Double Jeopardy. Issues involve a pretrial ruling and whether the trial court abused discretion in declaring a mistrial after defense counsel's perceived violation of that ruling.

Oral argument-October 2018

DISCRETIONARY REVIEW GRANTED 3/14/2018

Smith v. Smith, 2017-SC-348-DG

Torts. Personal Injury. Slip and Fall. Issues include whether the status of a visitor as an invitee or licensee or trespasser continues to define the scope of the property owner's duty to the visitor.

Oral argument-October 2018

Louisville MSD v. T+C Contracting, 2017-SC-274-DG

Contract. Fairness in Construction Act. KRS 371.405. Issues include whether the dispute resolution provisions in the parties' contract, which deem the contractor's claim for additional compensation from MSD waived if certain procedural requirements are not met, violate the Fairness in Construction Act.

Oral argument-October 2018

Comley v. Auto-Owners Insurance Company, 2017-SC-596-DG

Insurance Law. Homeowners Coverage. The issues, involving potential coverage for damage to a home resulting from a nearby water main break, concern the scope of the "water damage" exclusions as to "water below the surface of the ground . . . which . . . flows, seeps or leaks through any part of a building" and as to "regardless of the cause . . . flood."

Oral argument-October 2018

DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT 3/14/18

Gregory v. Hardgrove, 2017-SC-669-DG

Probate. Real Estate. Creditor of Decedent's Estate. The issue is whether a creditor of an estate, who files a notice of claim in probate court to preserve a claim for damages against the estate, may assert such claim against real estate of the decedent which passes immediately, under the laws of intestacy, to the decedent's children upon his death, even though the creditor does not have a judgment lien against the property for several years after the death of the original owner of the real estate.

DISCRETIONARY REVIEW GRANTED 4/18/18

Hayes v. D.C.I. Properties-D KY, 2017-SC-340-DG

Torts. Personal Injury. Trespasser. Attractive Nuisance. Issues include whether the 16-year-old plaintiff can recover for injuries sustained when he trespassed on the defendant's construction site.

Oral argument-October 2018

Bryant v. Louisville Metro Housing Authority, 2017-SC-367-DG

Governmental Immunity. Torts. Negligence. Issues include whether Louisville Metro Housing Authority is entitled to governmental immunity from the plaintiff's claims related to her child's shooting death at a housing authority apartment.

McAlpin v. Commonwealth, 2018-SC-87-DG

Criminal Law. Constructive Possession of a Controlled Substance. Unanimity of a Verdict. The issue is whether language of a jury instruction violated the unanimity requirement, when the evidence gathered in the search of an apartment was allegedly only constructively possessed by the defendant.

Cabinet for Health and Family Services, Commonwealth of Kentucky on Behalf of the Minor Child, C.R. v. C.B., 2018-SC-92-DGE

KRS 600.020(1). Dependency, Neglect and Abuse. Custody or Control. The issue is whether a parent, who is a drug addict who had periods where he was not compliant with his case plan with the Cabinet, must have custody or control of a child before there can be a finding of abuse or neglect.

DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT 4/18/18

Hagan v. Commonwealth, 2018-SC-84-DG

Appeals. Indispensable Party. Condemnation. Dower. The issue in this case is whether a party with only a dower interest in property which is sought to be condemned, was properly deemed to be an indispensable party to an appeal from a final order and judgment awarding compensation to several property owners.

May v. Harrison, 2018-SC-11-DGE

Family Law. Visitation. Issues involve the use of a KRS 403.290(1) *in camera* interview with a minor child to find facts supporting indefinite suspension of visitation with a mother's minor children.

**DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT
2/7/18 and CROSS MOTION GRANTED WITHOUT ORAL ARGUMENT
4/18/18**

Commonwealth v. James, 2017-SC-576-DG **and** (Cross-Motion) James v. Commonwealth, 2018-SC-66-DG

Criminal Law. Constructive Possession. Directed Verdict. Tampering with Evidence. The issue in this case is whether the defendant was entitled to a directed verdict of acquittal on possession of a controlled substance when it could not be established that he had possessed or dropped a pipe containing meth residue which was found near another item which was dropped by the defendant, but which contained no drug residue. On cross-motion, the issue is whether the simple act of dropping evidence in plain view of the police was sufficient to satisfy the elements of the crime of tampering with evidence under KRS 524.100.

DISCRETIONARY REVIEW GRANTED 6/6/18

Greissman v. Rawlings and Associates, 2017-SC-518-DG

Torts. Wrongful Termination. Public Policy Exception. Lawyers. Issues include whether a lawyer who is terminated for refusing to violate the Supreme Court Rules of Professional Conduct has a viable claim for wrongful termination under the public policy exception to at-will employment.

Adams v. Commonwealth, 2017-SC-599-DG

Criminal Law. Expungement. KRS 431.073. Issues include whether a defendant's Class D felony convictions qualify for expungement as a

“single incident” under KRS 431.073 when: (1) the defendant was convicted on four counts of theft by unlawful taking; (2) all four theft counts were charged in a single indictment; (3) the thefts occurred over a six-month period; and (4) all four thefts involved the same victim and the same type of property.

Getty v. Getty, 2018-SC-111-DG

Testamentary Capacity. Undue Influence. Directed Verdict. Misappropriation of Marital Property. Contempt. The main issues are whether there was sufficient evidence of lack of testamentary capacity and undue influence to overcome a motion for directed verdict. Another issue is whether the surviving spouse may be liable for misappropriation of marital property before and/or after the death of her husband. Also, was there a basis for holding the surviving spouse and her counsel in contempt of court for proceeding with cremation of the body of the deceased?

Krieger v. Garvin, 2018-SC-154-DGE

Child Custody. *De Facto* Custodians. At issue is the propriety of awarding “*de facto*” custodian status to an unmarried couple.

DISCRETIONARY REVIEW GRANTED 3/14/18 and CROSS MOTION GRANTED 6/6/18

Commonwealth v. Ferguson, 2017-SC-651-DG and Ferguson v. Commonwealth, 2018-SC-151-DG

Criminal Law. RCr 11.42 Motion. Ineffective Assistance of Counsel. *Pro Se* Defendant. The issue is whether the Defendant was entitled to a new trial when he and his trial counsel disagreed as to how to present his defense (suicide of the victim) to the charge of murder, resulting in the Movant seeking to represent himself at the close of the Commonwealth’s case-in-chief. An additional issue is whether the failure of trial counsel to conduct a reasonable investigation of the suicide defense and to retain an expert to support it denied the Movant his right to effective assistance of counsel.

DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT 6/6/18

Commonwealth v. Roth, 2018-SC-95-DG

Criminal Law. KRS 525.130. Cruelty to Animals. Wanton Conduct. Directed Verdict. The issue here is whether the Court of Appeals erred while granting discretionary review to reverse a jury verdict and conviction, ordering the entry of a directed verdict, on the grounds that there was insufficient evidence of the necessary *mens rea* required for conviction under this statute.

Baughman v. Commonwealth of Kentucky, Energy and Environment Cabinet, 2018-SC-104-DG

Administrative Law. Appointment of Receiver. Payment of Costs of Receiver. CR 54.04. The issue here is whether the trial court, within its discretion, may award the costs sought by a receiver appointed by the court against a prevailing party, which is a state agency carrying out its enforcement duties, which is then, in turn, given a judgment against the losing party in the amount of said costs.

DISCRETIONARY REVIEW GRANTED 8/8/18

Mostert v. The Mostert Group, 2017-SC-600-DG

Secured Transactions. Breach of Contract. Software and Source Code. Issues include whether the creator of a thoroughbred biometrics computer program was entitled to retain the program's "source code" when: (1) the creator sold the program to a company in exchange for \$500,000 and a security interest in specified program components; (2) as part of the sale, the creator signed an agreement requiring him to transfer the program's software and source code to the company; and (3) the security agreement between the creator and the company listed software, but not source code, as collateral.

Metzger v. Auto-Owners Insurance Company, 2018-SC-70-DG

Insurance. Commercial Automobile. UIM. "Covered Autos". Issues involve whether an automobile insurance policy issued to an LLC as sole named insured of listed covered vehicles owned by the LLC provides first class or only second-class coverage to an LLC member injured as a pedestrian.

CSX Transportation, Inc. v. Boggs, 2018-SC-191-DG

FELA. Jury Instructions. Statute of Limitations. The issue is what is the proper jury instruction by which a jury should determine when the claimant in an FELA case knew or should have known that their injury was caused by their work. A second issue is whether an FELA claimant may recover

for a worsening of a condition if a claim for the original injury is barred by the three-year statute of limitations.

Meinders v. Middleton, 2018-SC-251-DG

KRE 403.270(1). *De Facto* Custodian. Tolling of time period for determination of *de facto* custodian status by filing of petition for custody by biological parent. The issue to be determined is whether the alleged *de facto* custodian had satisfied the requirements of the statute prior to the filing of a custody petition by the biological father.

DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT
8/8/18

Culver v. Commonwealth, 2017-SC-568-DG

Criminal Law. First-Degree Wanton Endangerment. First-Degree Fleeing or Evading. Issues include whether a defendant who speeds during a nighttime police chase, but does not otherwise drive erratically, creates a substantial risk of death or serious physical injury sufficient for first-degree wanton endangerment and fleeing or evading.

Baldwin v. Commonwealth, 2018-SC-59-DG

Criminal Law. KRE 702. Proffer of new method or theory. *Daubert* hearing. The issue is whether and under what circumstances a trial court may or should, in its discretion, exclude evidence rather than grant a continuance of the trial. A related issue is whether the trial court must always conduct a *Daubert* hearing when evidence based upon a new theory or method of analysis is proffered, even though proffered in an untimely fashion.

Robinson v. Commonwealth, 2018-SC-234-DG

Criminal Law. Evidence. Damages. Discovery. Abuse of Discretion. The issue is whether the trial court abused its discretion by excluding evidence of damages rather than granting a continuance of the trial, when it is alleged that a discovery rule was violated regarding the production of the damage evidence.

